York (Mr. SCHUMER) was added as a cosponsor of S. 138, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. CON. RES. 1

At the request of Mr. SARBANES, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from South Dakota (Mr. DASCHLE), the Senator from North Dakota (Mr. DORGAN), the Senator from South Dakota (Mr. JOHNSON) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. Con. Res. 1, a concurrent resolution expressing the sense of Congress that there should continue to be parity between the adjustments in the compensation of members of the uniformed services and the adjustments in the compensation of civilian employees of the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRAIG (for himself, Mr. HAGEL, Mr. DASCHLE, Mr. CRAPO, Mr. BAUCUS, Mr. BURNS, Mr. DORGAN, Mr. SMITH, Mr. JOHNSON, and Mr. ENSIGN):

S. 144. A bill to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land; to the Committee on Energy and Natural Resources.

Mr. CRAIG. Mr. President, I would like to address an issue of enormous economic magnitude, but one that many are only vaguely familiar with. This issue is extremely important to those of us in the West and around the country because it affects countless farmers, ranchers, public land managers and private landowners, and it literally knows no boundaries.

Noxious weeds threaten fully two-thirds of all endangered species and are now considered by some experts to be the second most important threat to bio-diversity. In some areas in the West, spotted knapweed and thistle grows so dense that big game wildlife are forced to move out of the area to find edible plants. Noxious weeds also increase soil erosion, and prevent recreationists from accessing land that is infested with poisonous plants.

I believe stopping the spread of noxious weeds requires a two pronged effort. First, we must prevent new nonnative weed species from becoming established in the United States, and second, we must stop or slow the spread of the noxious weeds currently present in our country.

I have stood before Congress for a number of years pushing legislation and speaking on the issue of noxious weeds. I know some in the Senate tire of hearing me bring up this issue, but growing up on a farm and ranch in western Idaho, I have experienced the destruction caused when noxious weeds are not treated and are left to overtake native species. Two-thirds of our land in Idaho is owned by the Federal Government. Our Montana, Washington, and Oregon neighbors all have comparable Federal ownership. State and private land borders much of these Federal lands. I have seen the devastation noxious weeds can have when unchecked and not effectively treated or managed largely due to lack of resources.

Because of these problems, during the 106th Congress I introduced and worked to pass the Plant Protection Act. That bill primarily dealt with the Animal Plant Health Inspection Service's, APHIS, authority to block or regulate the importation or movement of a noxious weed and plant pest, and it also provides authority for inspection and enforcement of the regulations. Basically the bill focused on stopping the weeds at our borders.

Last Congress, along with 16 of my colleagues, I introduced S. 198, the ''Noxious Weed Control Act.'' We held two Committee hearings on the bill, and it passed the Senate in November. Unfortunately there was not time to reconcile the bill with the other body, so we are introducing the legislation again.

To develop the Noxious Weed Control Act, I worked tirelessly with the National Cattlemen's Beef Association, Public Lands Council, and The Nature Conservancy. This legislation will provide a mechanism to get funding to the local level where weeds can be fought in a collaborative way. Working together is what this entire initiative is all about.

Specifically, this bill establishes, in the Office of the Secretary of the Interior, a program to provide assistance through States to eligible weed management entities. The Secretary of the Interior would appoint an Advisory Committee of ten individuals to make recommendations to the Secretary regarding the annual allocation of funds. The Secretary, in consultation with the Advisory Committee, would allocate funds to States to provide funding to eligible weed management entities to carry out projects approved by States to control or eradicate harmful, non-native weeds on public and private lands. Funds would be allocated based on several factors, including but not limited to: the seriousness of the problem in the State; the extent to which the Federal funds will be used to leverage non-Federal funds to address the problem; and the extent to which the State has already made progress in addressing the problems.

The bill directs that the States may use 8 percent of their allocation to fund applied research to solve locally significant weed management problems and solutions. States may also allocate 25 percent of available funding to encourage the formation of weed management areas and to carry out projects relating to the control and eradication of noxious weeds, and 75 percent for financial awards to eligible weed management entities. To be eligible for funding, a weed management entity must be established by local stakeholders for weed management or public education purposes, provide the State a description of its purpose and proposed projects, and fulfill any other requirements set by the State. Projects would be evaluated, giving equal consideration to economic and natural values, and selected for funding based on factors such as the seriousness of the problem, the likelihood that the project will address the problem, and the comprehensiveness of the project's approach to the noxious weed problem within the State. A 50 percent of non-Federal match is required to receive the funds.

The Department of Agriculture in Idaho, ISDA, has developed a ''Strategic Plan for Managing Noxious Weeds'' through a collaborative effort involving private landowners, State and Federal land managers, State and local governmental entities, and other interested parties. Cooperative Weed Management Areas, CWMAs, are the centerpiece of the strategic plan. CWMAs cross jurisdictional boundaries to bring together all landowners, land managers, and interested parties to identify and prioritize noxious weed strategies within the CWMA in a collaborative manner. The primary responsibilities of the ISDA are to provide coordination, administrative support, facilitation, and project cost-share funding for this collaborative effort. Idaho already has a record of working in a collaborative way on this issue, my legislation will build on the progress we have had, and establish the same formula for success in other States.

As I have said before, noxious weeds are a serious problem on both public and private lands across the Nation. Like a ''slow burning wildfire,'' noxious weeds take land out of production, force native species off the land, and interrupt the commerce and activities of all those who rely on the land for their livelihoods, including farmers, ranchers, recreationists, and others.

I believe we must focus our efforts to rid our lands of this devastating invader. Noxious weeds are not only a problem for farmers and ranchers, but a hazard to our environment, economy, and communities in Idaho, the West, and for the country as a whole. We must reclaim the rangeland for natural species. Noxious weeds do not recognize property boundaries, so if we want to win this war on weeds, we must integrate all stakeholders at the Federal, State, local, and individual levels. The Noxious Weed Control Act is an important step to ensure we are diligent in stopping the spread of these weeds. I am confident that if we work together at all levels of government and throughout our communities, we can protect our land, livelihood, and environment.

I urge my colleagues to support this effort.

By Mr. KYL (for himself, Mr. MCCAIN, Mr. SESSIONS, and Mr. BAYH):

S. 145. A bill to prohibit assistance to North Korea or the Korean Peninsula Development Organization, and for other purposes; to the Committee on Foreign Relations.

Mr. KYL. Mr. President, I ask unanimous consent that the text of the North Korea Democracy Act of 2003 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 145

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''North Korea Democracy Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Under the Agreed Framework of October 21, 1994, North Korea committed to—

(A) freeze and eventually dismantle its graphite-moderated reactors and related facilities;

(B) implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula, which prohibits the production, testing, or possession of nuclear weapons; and

(C) allow implementation of its IAEA safeguards agreement under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) for nuclear facilities designated under the Agreed Framework and any other North Korean nuclear facilities.

(2) The General Accounting Office has reported that North Korea has diverted heavy oil received from the United States-led Korean Peninsula Energy Development Organization for unauthorized purposes in violation of the Agreed Framework.

(3) On April 1, 2002, President George W. Bush stated that he would not certify North Korea's compliance with all provisions of the Agreed Framework.

(4) North Korea has violated the basic terms of the Agreed Framework and the North-South Joint Declaration on the Denuclearlization of the Korean Peninsula by pursuing the enrichment of uranium for the purpose of building a nuclear weapon and by ''nuclearizing'' the Korean peninsula.

(5) North Korea has admitted to having a covert nuclear weapons program and declared the Agreed Framework nullified.

(6) North Korea has announced its intention to restart the 5-megawatt reactor and related reprocessing facility at Yongbyon, which were frozen under the Agreed Framework, and has expelled the IAEA personnel monitoring the freeze.

(7) North Korea has announced its intention to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow on July 1, 1968 (21 UST 483).

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREED FRAMEWORK.—The term ''Agreed Framework'' means the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea, signed in Geneva on October 21, 1994, and the Confidential Minute to that agreement.

(2) IAEA.—The term ''IAEA'' means the International Atomic Energy Agency.

(3) KEDO.—The term ''KEDO'' means the Korean Peninsula Energy Development Organization.

(4) NORTH KOREA.—The term ''North Korea'' means the Democratic People's Republic of Korea.

(5) NPT.—The term ''NPT'' means the Treaty on the Non-Proliferation of Nuclear Weapons done at Washington, London, and Moscow, July 1, 1968 (22 UST 483).

SEC. 4. SENSE OF CONGRESS REGARDING THE AGREED FRAMEWORK AND THE NORTH KOREAN NUCLEAR WEAPONS PROGRAM.

It is the sense of Congress that—

(1) the Agreed Framework is, as a result of North Korea's own illicit and deceitful actions over several years and recent declaration, null and void;

(2) North Korea's pursuit and development of nuclear weapons—

(A) is of grave concern and represents a serious threat to the security of the United States, its regional allies, and friends;

(B) is a clear and present danger to United States forces and personnel in the region and the United States homeland; and

(C) seriously undermines the security and stability of Northeast Asia; and

(3) North Korea must immediately come into compliance with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons and other commitments to the international community by—

(A) renouncing its nuclear weapons and materials production ambitions;

(B) dismantling its nuclear infrastructure and facilities;

(C) transferring all sensitive nuclear materials, technologies, and equipment (including nuclear devices in any stage of development) to the IAEA forthwith; and

(D) allowing immediate, full, and unfettered access by IAEA inspectors to ensure that subparagraphs (A), (B), and (C) have been fully and verifiably achieved; and

(4) any diplomatic solution to the North Korean crisis—

(A) should take into account that North Korea is not a trustworthy negotiating partner;

(B) must achieve the total dismantlement of North Korea's nuclear weapons and nuclear production capability; and

(C) must include highly intrusive verification requirements, including on-site monitoring and free access for the investigation of all sites of concern, that are no less stringent than those imposed on Iraq pursuant to United Nations Security Council Resolution 1441 (2002) and previous corresponding resolutions.

SEC. 5. PROHIBITION ON UNITED STATES ASSISTANCE UNDER THE AGREED FRAMEWORK.

No department, agency, or entity of the United States Government may provide assistance to North Korea or the Korean Peninsula Energy Development Organization under the Agreed Framework.

SEC. 6. LIMITATIONS ON NUCLEAR COOPERATION.

(a) RESTRICTION ON ENTRY INTO FORCE OF NUCLEAR COOPERATION AGREEMENT AND IMPLEMENTATION OF THE AGREEMENT.—Section 822(a) of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001 (as enacted by section 1000(b)(7) of Public Law 106–113; 113 Stat. 1501A–472) is amended to read as follows:

''(a) IN GENERAL.—

''(1) RESTRICTIONS.—Notwithstanding any other provision of law or any international agreement, unless or until the conditions described in paragraph (2) are satisfied—

''(A) no agreement for cooperation (as defined in section 11 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2014 b.)) between the United States and North Korea may become effective;

''(B) no license may be issued for export directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement;

''(C) no approval may be given for the transfer or retransfer directly or indirectly to North Korea of any nuclear material, facilities, components, or other goods, services, or technology that would be subject to such agreement;

''(D) no license may be issued under the Export Administration Act of 1979 for the export to North Korea of any item or related technical data which, as determined under section 309(c) of the Nuclear Non-Proliferation Act of 1978, could be of significance for nuclear explosive purposes or the production of nuclear materials;

''(E) no license may be issued under section 109 b. of the Atomic Energy Act of 1954 for the export to North Korea of any component, substance, or item that is subject to a license requirement under such section;

''(F) no approval may be granted, under the Export Administration Act of 1979 or section 109 b.(3) of the Atomic Energy Act of 1954, for the retransfer to North Korea of any item, technical data, component, or substance described in subparagraph (D) or (E); and

''(G) no authorization may be granted under section 57 b.(2) of the Atomic Energy Act of 1954 for any person to engage, directly or indirectly, in the production of special nuclear material (as defined in section 11 aa. of the Atomic Energy Act of 1954) in North Korea.

''(2) CONDITIONS.—The conditions referred to in paragraph (1) are that—

''(A) the President determines and reports to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that—

''(i) North Korea has come into full compliance with its safeguards agreement with the IAEA (INFCIRC/403), and has taken all steps that have been deemed necessary by the IAEA in this regard;

''(ii) North Korea has permitted the IAEA full access to—

''(I) all additional sites and all information (including historical records) deemed necessary by the IAEA to verify the accuracy and completeness of North Korea's initial report of May 4, 1992, to the IAEA on all nuclear sites and material in North Korea; and

''(II) all nuclear sites deemed to be of concern to the IAEA subsequent to that report;

''(iii) North Korea has consistently and verifiably taken steps to implement the Joint Declaration on Denuclearization, and is in full compliance with its obligations under numbered paragraphs 1, 2, and 3 of the Joint Declaration on Denuclearization;

''(iv) North Korea does not have uranium enrichment or nuclear reprocessing facilities, and is making no progress toward acquiring or developing such facilities;

''(v) North Korea does not have nuclear materials or nuclear weapons and is making no effort to acquire, develop, test, produce, or deploy such weapons; and

''(vi) the transfer, approval, licensing, or authorization of any of such materials, components, facilities, goods, services, technologies, data, substances or production to, for or in North Korea is in the national interest of the United States; and

''(B) there is enacted into law a joint resolution stating in substance the approval of Congress of such action.''.

(b) CONFORMING AMENDMENT.—Section 822(b) of such Act is amended by striking ''subsection (a)'' and inserting ''subsection (a)(1)''.

SEC. 7. APPLICATION OF UNITED STATES SANCTIONS.

(a) AUTHORITY TO IMPOSE ADDITIONAL UNITED STATES SANCTIONS AGAINST NORTH KOREA.—The President is authorized to exercise any of his authorities under the Foreign Assistance Act of 1961, the Arms Export Control Act, the International Emergency Economic Powers Act, or any other provision of law to impose full economic sanctions against North Korea, or to take any other appropriate action against North Korea, including the interdiction of shipments of weapons, weapons-related components, materials, or technologies, or dual-use items traveling to or from North Korea, in response to the activities of North Korea to develop nuclear weapons in violation of North Korea's international obligations.

(b) PROHIBITION ON AVAILABILITY OF FUNDS FOR EASING OF SANCTIONS AGAINST NORTH KOREA.—None of the funds appropriated under any provision of law may be made available to carry out any sanctions regime against North Korea that is less restrictive than the sanctions regime in effect against North Korea immediately prior to the September 17, 1999, announcement by the President of an easing of sanctions against North Korea.

SEC. 8. PURSUIT OF MULTILATERAL MEASURES.

The President should take all necessary and appropriate actions to obtain—

(1) international condemnation of North Korea for its pursuit of nuclear weapons and serious breach of the Treaty on the Non-Proliferation of Nuclear Weapons and other international obligations, and

(2) multilateral diplomatic and economic sanctions against North Korea that are at least as restrictive as United Nations Security Council Resolution 661 concerning Iraq.

SEC. 9. TREATMENT OF REFUGEES FROM NORTH KOREA.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should begin immediately to work with other countries in the region to adopt a policy with respect to refugees from North Korea that would—

(1) guarantee all such refugees safe arrival in a country of first asylum in which the refugees would stay on a temporary basis; and

(2) promote burden-sharing of refugee costs between countries by providing for the resettlement of the refugees from the country of first asylum to a third country.

(b) ELIGIBILITY FOR REFUGEE STATUS.—

(1) IN GENERAL.—In the case of an alien who is a national of North Korea, the alien may establish, for purposes of admission as a refugee under section 207 of the Immigration and Nationality Act, that the alien has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution.

(2) NOT TREATED AS NATIONAL OF SOUTH KOREA.—For purposes of eligibility for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or for asylum under section 208 of such Act (8 U.S.C. 1158), a national of North Korea shall not be considered a national of the Republic of Korea.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 10. INCREASED BROADCASTING BY RADIO FREE ASIA.

(a) IN GENERAL.—In making grants to Radio Free Asia, the Broadcasting Board of Governors shall ensure that Radio Free Asia increases its broadcasting with respect to North Korea to 24 hours each day.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 11. SENSE OF CONGRESS.

It is the sense of Congress that the United States, in conjunction with the Republic of Korea and other allies in the Pacific region, should take measures, including military reinforcements, enhanced defense exercises and other steps as appropriate, to ensure—

(1) the highest possible level of deterrence against the multiple threats that North Korea poses; and

(2) the highest level of readiness of United States and allied forces should military action become necessary.

SEC. 12. PRESIDENTIAL REPORT.

Not later than 180 days after the date of enactment of this Act, the President shall submit a report to Congress regarding his actions to implement the provisions of this Act.

By Mr. DEWINE (for himself, Mr. GRAHAM of South Carolina, Mr. VOINOVICH, Mr. ENSIGN, Mr. BROWNBACK, Mr. ENZI, Mr. INHOFE, Mr. NICKLES, Mr. SANTORUM, and Mr. FITZGERALD):

S. 146. A bill to amend titles 10 and 18, United States Code, to protect unborn victims of violence; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 146

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unborn Victims of Violence Act of 2003''.

SEC. 2. PROTECTION OF UNBORN CHILDREN.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 90 the following:

''CHAPTER 90A—PROTECTION OF UNBORN CHILDREN

''§ 1841. Causing death of or bodily injury to unborn child

''(a)(1) Any person who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

''(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment provided for that conduct under Federal law had that injury or death occurred to the unborn child's mother.

''(B) An offense under this section does not require proof that—

''(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

''(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

''(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall be punished as provided under section 1111, 1112, or 1113, as applicable, for intentionally killing or attempting to kill a human being, instead of the penalties that would otherwise apply under subparagraph (A).

''(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

''(b) The provisions referred to in subsection (a) are the following:

''(1) Sections 36, 37, 43, 111, 112, 113, 114, 115, 229, 242, 245, 247, 248, 351, 831, 844(d), 844(f), 844(h)(1), 844(i), 924(j), 930, 1111, 1112, 1113, 1114, 1116, 1118, 1119, 1120, 1121, 1153(a), 1201(a), 1203, 1365(a), 1501, 1503, 1505, 1512, 1513, 1751, 1864, 1951, 1952(a)(1)(B), 1952(a)(2)(B), 1952(a)(3)(B), 1958, 1959, 1992, 2113, 2114, 2116, 2118, 2119, 2191, 2231, 2241(a), 2245, 2261, 2261A, 2280, 2281, 2332, 2332a, 2332b, 2340A, and 2441 of this title.

''(2) Section 408(e) of the Controlled Substances Act of 1970 (21 U.S.C. 848(e)).

''(3) Section 202 of the Atomic Energy Act of 1954 (42 U.S.C. 2283).

''(c) Subsection (a) does not permit prosecution—

''(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

''(2) for conduct relating to any medical treatment of the pregnant woman or her unborn child; or

''(3) of any woman with respect to her unborn child.

''(d) In this section—

''(1) the terms 'child in utero' and 'child, who is in utero' mean a member of the species homo sapiens, at any stage of development, who is carried in the womb; and

''(2) the term 'unborn child' means a child in utero.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 90 the following:

SEC. 3. MILITARY JUSTICE SYSTEM.

(a) PROTECTION OF UNBORN CHILDREN.—Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 919 (article 119) the following:

''§ 919a. Art. 119a. Causing death of or bodily injury to unborn child

''(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18) to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense under this section.

''(2)(A) Except as otherwise provided in this paragraph, the punishment for that separate offense is the same as the punishment for that conduct under this chapter had that injury or death occurred to the unborn child's mother.

''(B) An offense under this section does not require proof that—

''(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

''(ii) the defendant intended to cause the death of, or bodily injury to, the unborn child.

''(C) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall be punished as provided under section 918, 919, or 880 of this title (article 118, 119, or 80), as applicable, for intentionally killing or attempting to kill a human being, instead of

the penalties that would otherwise apply under subparagraph (A).

''(D) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

''(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 111, 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

''(c) Subsection (a) does not permit prosecution—

''(1) for conduct relating to an abortion for which the consent of the pregnant woman has been obtained or for which such consent is implied by law in a medical emergency;

''(2) for conduct relating to any medical treatment of the pregnant woman or her unborn child; or

''(3) of any woman with respect to her unborn child.

''(d) In this section—

''(1) the terms 'child in utero' and 'child, who is in utero' mean a member of the species homo sapiens, at any stage of development, who is carried in the womb; and

''(2) the term 'unborn child' means a child in utero.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after the item relating to section 919 the following:

''919a. 119a. Causing death of or bodily injury to unborn child.''.

By Mr. DEWINE:

S. 147. A bill to amend title 18 of the United States Code to add a general provision for criminal attempt; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 147

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the ''General Attempt Provision Act''.

SEC. 2. ESTABLISHMENT OF GENERAL ATTEMPT OFFENSE.

(a) Chapter 19 of title 18, United States Code, is amended—

(1) in the chapter heading, by striking ''Conspiracy'' and inserting ''Inchoate offenses''; and

(2) by adding at the end the following:

''§ 374. Attempt to commit offense

''(a) IN GENERAL.—Whoever, acting with the state of mind otherwise required for the commission of an offense described in this title, intentionally engages in conduct that, in fact, constitutes a substantial step toward the commission of the offense, is guilty of an attempt and is subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt, except that the penalty of death shall not be imposed.

''(b) INABILITY TO COMMIT OFFENSE; COMPLETION OF OFFENSE.—It is not a defense to a prosecution under this section—

''(1) that it was factually impossible for the actor to commit the offense, if the offense could have been committed had the circumstances been as the actor believed them to be; or

''(2) that the offense attempted was completed.

''(c) EXCEPTIONS.—This section does not apply—

''(1) to an offense consisting of conspiracy, attempt, endeavor, or solicitation;

''(2) to an offense consisting of an omission, refusal, failure of refraining to act;

''(3) to an offense involving negligent conduct; or

''(4) to an offense described in section 1118, 1120, 1121, or 1153.

''(d) AFFIRMATIVE DEFENSE.—

''(1) IN GENERAL.—It is an affirmative defense to a prosecution under this section, on which the defendant bears the burden of persuasion by a preponderance of the evidence, that, under circumstances manifesting a voluntary and complete renunciation of criminal intent, the defendant prevented the commission of the offense.

''(2) DEFINITION.—For purposes of this subsection, a renunciation is not 'voluntary and complete' if it is motivated in whole or in part by circumstances that increase the probability of detection or apprehension or that make it more difficult to accomplish the offense, or by a decision to postpone the offense until a more advantageous time or to transfer the criminal effort to a similar objective or victim.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 19 of title 18, United States Code, is amended by adding at the end the following:

''374. Attempt to commit offense.''.

SEC. 3. RATIONALIZATION OF CONSPIRACY PENALTY AND CREATION OF RENUNCIATION DEFENSE.

Section 371 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking ''If two or more'' and inserting the following:

''(a) IN GENERAL.—If 2 or more''; and

(B) by striking ''either to commit any offense against the United States, or'';

(2) by striking the second undesignated paragraph; and

(3) by adding at the end the following:

''(b) CONSPIRACY.—If 2 or more persons conspire to commit any offense against the United States, and 1 or more of such persons do any act to effect the object of the conspiracy, each shall be subject to the same penalties as those prescribed for the most serious offense, the commission of which was the object of the conspiracy, except that the penalty of death shall not be imposed.''.

By Mr. DEWINE:

S. 148. A bill to provide for the Secretary of Homeland Security to be included in the line of Presidential succession; to the Committee on Rules and Administration.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SECRETARY OF HOMELAND SECURITY IN PRESIDENTIAL LINE OF SUCCESSION.

Section 19(d)(1) of title 3, United States Code, is amended by inserting ''Secretary of Homeland Security,'' after ''Attorney General,''.

By Mr. DEWINE (for himself and Mr. CRAPO):

S. 149. A bill to improve investigation and prosecution of sexual assault cases with DNA evidence, and for other purposes; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rape Kits and DNA Evidence Backlog Elimination Act of 2003''.

SEC. 2. REAUTHORIZATION OF DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000.

Section 2(j) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(j)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking ''and'';

(B) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(D) $25,000,000 for fiscal year 2004;

''(E) $25,000,000 for fiscal year 2005;

''(F) $25,000,000 for fiscal year 2006; and

''(G) $25,000,000 for fiscal year 2007.''; and

(2) in paragraph (2)—

(A) in subparagraph (C), by striking ''and''; and

(B) by striking subparagraph (D), and inserting the following:

''(D) $75,000,000 for fiscal year 2004;

''(E) $75,000,000 for fiscal year 2005;

''(F) $25,000,000 for fiscal year 2006; and

''(G) $25,000,000 for fiscal year 2007.''.

SEC. 3. EXPANSION OF COMBINED DNA INDEX SYSTEM.

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes; and

''(B) other persons, as authorized under the laws of the jurisdiction that generates the records;''; and

(2) by striking subsection (d).

(b) FELONS CONVICTED OF FEDERAL CRIMES.—

Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses under paragraphs (1) through (3).''.

(c) UNIFORM CODE OF MILITARY JUSTICE.—Section 1565 of title 10, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

''(1) Any offense under the Uniform Code of Military Justice for which the authorized

penalties include confinement for more than 1 year.

''(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000).'';

(2) by striking subsection (e); and

(3) by redesignating subsection (f) as subsection (e).

(d) TECHNICAL AMENDMENTS.—Section 811(a)(2) of the Antiterrorism and Effective Death Penalty Act of 1996 (28 U.S.C. 531 note) is amended—

(1) in subparagraph (A), by striking ''[42 U.S.C.A. 14132a(d)]'' and inserting ''(42 U.S.C. 14135a(d))''; and

(2) in subparagraph (B), by striking ''[42 U.S.C.A. §14132b(d)]'' and inserting ''(42 U.S.C. 14135b(d))''.

SEC. 4. FORENSIC LABORATORY GRANTS.

(a) GRANTS AUTHORIZED.—The Attorney General is authorized to award grants to not more than 15 State or local forensic laboratories to implement innovative plans to encourage law enforcement, judicial, and corrections personnel to increase the submission of rape evidence kits and other biological evidence from crime scenes.

(b) APPLICATION.—Not later than December 31, 2004, each laboratory desiring a grant under this section shall submit an application containing a proposed plan to encourage law enforcement officials in localities with a DNA backlog to increase the submission of rape evidence kits and other biological evidence from crime scenes.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of the fiscal years 2004 through 2006 to carry out the provisions of this section.

SEC. 5. ELIGIBILITY OF LOCAL GOVERNMENTS OR INDIAN TRIBES TO APPLY FOR AND RECEIVE DNA BACKLOG ELIMINATION GRANTS.

Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by inserting '', units of local government, or Indian tribes'' after ''eligible States''; and

(ii) by inserting '', unit of local government, or Indian tribe'' after ''State''; and

(B) in paragraph (3), by striking ''or by units of local government'' and inserting '', units of local government, or Indian tribes'';

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting '', unit of local government, or Indian tribe'' after ''State'' each place that term appears;

(B) in paragraph (1), by inserting '', unit of local government, or Indian tribe'' after ''State'';

(C) in paragraph (3), by inserting '', unit of local government, or Indian tribe'' after ''State'' the first time that term appears;

(D) in paragraph (4), by inserting '', unit of local government, or Indian tribe'' after ''State''; and

(E) in paragraph (5), by inserting '', unit of local government, or Indian tribe'' after ''State'';

(3) in subsection (c), by inserting '', unit of local government, or Indian tribe'' after ''State'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''or a unit of local government'' and inserting '', a unit of local government, or an Indian tribe''; and

(ii) in subparagraph (B), by striking ''or a unit of local government'' and inserting '', a unit of local government, or an Indian tribe''; and

(B) in paragraph (2)(A), by inserting '', units of local government, and Indian tribes,'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' each place that term appears; and

(B) in paragraph (2), by inserting '', unit of local government, or Indian tribe'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting '', unit of local government, or Indian tribe'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting '', unit of local government, or Indian tribe'' after ''State''; and

(B) in paragraph (2), by inserting '', units of local government, or Indian tribes'' after ''States''; and

(8) in subsection (h), by inserting '', unit of local government, or Indian tribe'' after ''State'' each place that term appears.

SEC. 6. SAFE PROGRAM.

(a) ESTABLISHMENT OF GRANT PROGRAM.—The Attorney General shall establish a program to award and disburse annual grants to SAFE programs.

(b) COMPLIANCE WITH NATIONAL PROTOCOL.—To receive a grant under this section, a proposed or existing SAFE program shall be in compliance with the standards and recommended national protocol developed by the Attorney General pursuant to section 1405 of the Victims of Trafficking and Violence Protection Act of 2000 (42 U.S.C. 3796gg note).

(c) APPLICATION.—

(1) IN GENERAL.—Each proposed or existing SAFE program that desires a grant under this section shall submit an application to the Attorney General at such time, and in such manner, as the Attorney General shall reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall include information regarding—

(A) the size of the population or estimated population to be served by the proposed or existing SAFE program; and

(B) if the SAFE program exists at the time the applicant submits its application, the effectiveness of that SAFE program.

(d) PRIORITY GIVEN TO PROGRAMS IN UNDERSERVED AREAS.—In awarding grants under this section, the Attorney General shall give priority to proposed or existing SAFE programs that are serving, or will serve, populations currently underserved by existing SAFE programs.

(e) NONEXCLUSIVITY.—Nothing in this Act shall be construed to limit or restrict the ability of proposed or existing SAFE programs to apply for and obtain Federal funding from any other agency or department, or under any other Federal grant program.

(f) AUDITS.—The Attorney General shall audit recipients of grants awarded and disbursed under this section to ensure—

(1) compliance with the standards and recommended national protocol developed by the Attorney General pursuant to section 1405 of the Victims of Trafficking and Violence Protection Act of 2000 (42 U.S.C. 3796gg note);

(2) compliance with other applicable Federal laws; and

(3) overall program effectiveness.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice $10,000,000 for each of fiscal years 2004 through 2008 for grants under this section.

SEC. 7. DNA EVIDENCE TRAINING GRANTS.

(a) GRANTS AUTHORIZED.—The Attorney General is authorized to award grants to prosecutor's offices, associations, or organizations to train local prosecutors in the use of DNA evidence in a criminal investigation or a trial.

(b) APPLICATION.—Each eligible entity desiring a grant under this section shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of the fiscal years 2004 through 2006 to carry out the provisions of this section.

SEC. 8. NO STATUTE OF LIMITATIONS FOR CHILD ABDUCTION AND SEX CRIMES.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''§ 3297. Child abduction and sex offenses

''Notwithstanding any other provision of law, an indictment may be found or an information instituted at any time without limitation for any offense under section 1201 involving a minor victim, and for any felony under chapter 109A, 110, or 117, or section 1591.''.

(2) AMENDMENT TO CHAPTER ANALYSIS.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''3297. Child abduction and sex offenses.''.

(b) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section.

SEC. 9. TOLLING OF LIMITATION PERIOD FOR PROSECUTION IN CASES INVOLVING DNA IDENTIFICATION.

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, as amended by section 8, is further amended by adding at the end the following:

''§ 3298. Cases involving DNA evidence

''In a case in which DNA testing implicates a person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the DNA testing that implicates the person has elapsed that is equal to the otherwise applicable limitation period.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3298. Cases involving DNA evidence.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section.

SEC. 10. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting ''dating violence,'' after ''domestic violence,'';

(2) in subsection (b)—

(A) by inserting before paragraph (1) the following:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person—

''(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

''(B) where the existence of such a relationship shall be determined based on a consideration of—

''(i) the length of the relationship;

''(ii) the type of relationship; and

''(iii) the frequency of interaction between the persons involved in the relationship.'';

(B) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4) respectively; and

(C) in paragraph (3), as redesignated by subparagraph (B) of this paragraph, by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1), by inserting—

(i) '', dating violence,'' after ''between domestic violence''; and

(ii) ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

SEC. 11. SENSE OF CONGRESS.

It is the sense of Congress that the Paul Coverdell National Forensic Science Improvement Act (Public Law 106–561) should be funded in order to improve the quality, timeliness, and credibility of forensic science services for criminal justice purposes.

By Mr. ALLEN:

S. 150. A bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act; to the Committee on Commerce, Science, and Transportation.

Mr. ALLEN. Mr. President, today I rise to introduce the Internet Tax Nondiscrimination Act of 2003, to permanently extend the moratorium on Internet access taxes, as well as prevent multiple and discriminatory taxes on the Internet. There are two postulates in life that guide me today: first, always stand strong for freedom and opportunity for all people; and second, always keep your word and keep your promises.

As many in this chamber know, I have made permanently extending the moratorium on new taxes that discriminate against the Internet one of my top priorities since coming to the Senate. Looking back two years ago, as a rookie, I was pleased to work in the successful effort, with Senator MCCAIN and others, to extend the moratorium on new Internet taxes for two years. Of course, I would have preferred to have a permanent moratorium and introduced S. 777 to do so back in 2001.

I cannot ever envision a time when it will be desirable policy for any government to tax access to the Internet. I cannot ever conceive of any instance or event that will precipitate justification for multiple or discriminatory taxes on the Internet by any government, large or small, national, State or local.

This has been a position I have held from 1997 during my days as Governor or Virginia when I was one of only four Governors with this position. I have promised the first bill I'd introduce in the 108th Congress would be a permanent ban on discriminatory taxes and Internet access taxes. I am one who stands on the side of freedom of the Internet, trusting free people and entrepreneurs, not on the side of making this advancement in technology easier to tax for the tax collectors. My legislation will permanently ban taxes on Internet access, as well as taxes on Internet transactions by multiple jurisdictions, and discriminatory taxes that unfairly target Internet transactions.

The current moratorium on Internet tax is set to expire in November of this year. I want the members of this body to understand that the moratorium on Internet tax is completely unrelated to issues surrounding sales tax simplification. I was here for the previous debate when legislation extending this moratorium was bogged down and held hostage on the extremely complicated and cumbersome issue of sales tax collection.

Since that time, I know State tax administrators have been working to simplify their sales tax system. However, I encourage my colleagues in the Senate that when considering the issue of sales tax simplification and business activity tax nexus that they do so separately from legislation that deals with the Internet tax moratorium.

I understand most of the States are looking for more tax revenue, but the Internet Tax Nondiscrimination Act will not, and does not, prohibit States from collecting sales and use tax on electronic commerce. Rather, this legislation will permanently ban taxes placed on consumers to access the Internet, like the Spanish American War Tax on telephone service, and prohibits multiple and discriminatory taxes on Internet purchases, which are taxes that would apply more than once on the same product or taxes that are higher because of the method by which a product is purchased.

The moratorium on Internet access taxes prohibits governments from placing taxes on top of the monthly rates Americans already pay to connect to the Internet. I am concerned that if this Congress were to allow new, discriminatory taxes on Internet access it would be allowing States and localities to contribute to the economic ''digital divide.'' For every dollar added to the cost of Internet access, we can expect to see lost utilization of the Internet by thousands of lower income American families nationwide.

Now, more than ever, with our Nation's economy emerging from a recession and the Congress working with the President on an economic stimulus package, the people of this country need security with regard to their financial future. Any additional tax burdens on the Internet, will mean additional costs that many Americans cannot afford, forcing the poorest in our society to reduce or even forgo their use of the Internet as a tool for education, exploration and individual opportunity.

The more expensive the government makes Internet access, the less likely people will be to buy advanced services, such as high-speed broadband connections, Internet protocol software, wireless WiFi devices and many other multimedia applications. In a time when technology and the Internet have grown into every aspect of our daily lives and where access to the Internet has become a necessity for Americans, will imposing taxes to access the Internet or levying taxes that discriminate against the Internet as a form of commerce ever be fair? The answer is that there will never be a time to tax access to the Internet nor impose discriminatory taxes on Internet commerce.

The goal of the Internet Tax Nondiscrimination Act is simple and clear: the Internet should remain as accessible as possible to all people in all parts of our country, forever.

I call on my colleagues to join me and cosponsor the Internet Tax Nondiscrimination Act of 2003, permanently extending the Internet moratorium on access, multiple and discriminatory taxes.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 150

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Non-discrimination Act of 2003''.

SEC. 2. AMENDMENT OF INTERNET TAX FREEDOM ACT.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt.) is amended—

(1) by striking ''taxes during the period beginning on October 1, 1998, and ending on November 1, 2003—'' and inserting ''taxes:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

SEC. 3. REPEAL OF EXCEPTION.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 nt.) is amended by striking paragraph (10).

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. BENNETT):

S. 151. A bill to amend title 18, United States Code, with respect to the sexual exploitation of children; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce a critically important piece of legislation, the PROTECT Act of 2003. As its name makes clear, this bill will help to protect our children from the horrors of child pornography. Disgusting as child pornography is, the growth of technology and the rise of the internet have flooded our Nation with it. This is one area where we cannot afford to simply look the other way. Child pornography is routinely used by perverts and pedophiles

not only to whet their sick desires, but also to lure our defenseless children into unspeakable acts of sexual exploitation. In sum, child pornography is a root from which more evils grow. It creates a measurable harm to children in our society. On this record, we must act.

I am proud to have Senator LEAHY as the leading co-sponsor of the PROTECT Act. We jointly introduced an earlier version of this bill last year in the wake of the Supreme Court's decision in Ashcroft v. Free Speech Coalition. That decision greatly weakened the laws pertaining to child pornography and left some gaping holes in our Nation's ability to effectively prosecute child pornography offenses. We must now act quickly to repair our child pornography laws to provide for effective law enforcement in a manner that accords with the Court's ruling.

The PROTECT Act strikes a necessary balance between the First Amendment and our Nation's critically important interest in protecting children. This Act does many things to aid the prosecution of child PROTECT Act, and I highlight some of its most significant provisions here.

First, the Act plugs the loophole that exists today where child pornographers can escape prosecution by claiming that their sexually explicit material did not actually involve real children. Technology has advanced so far that even experts often cannot say with absolute certainty that an image is real or a ''virtual'' computer creation. For this reason, the Act permits a prosecution to proceed when the child pornography includes persons who appear virtually indistinguishable from actual minors. And even when this occurs, the accused is afforded a complete affirmative defense by showing that the child pornography did not involve a minor.

Second, the Act prohibits the pandering or solicitation of anything represented to be obscene child pornography. The Supreme Court has ruled that this type of conduct does not constitute protected speech. Congress, moreover, should severely punish those who would try to profit or satisfy their depraved desires by dealing in such filth.

Third, the Act prohibits any depictions of minors, or apparent minors, in actual, not simulated, acts of bestiality, sadistic or masochistic abuse, or sexual intercourse, when such depictions lack literary, artistic, political or scientific value. This type of hardcore sexually explicit material merits our highest form of disdain and disgust and is something that our society ought to try hard to eradicate. Nor does the First Amendment bar us from banning the depictions of children actually engaging in the most explicit and disturbing forms of sexual activity.

Fourth, the Act beefs up existing record keeping requirements for those who chose to produce sexually explicit materials. These record keeping requirements are unobjectionable since they do not ban anything. Rather, the Act simply requires such producers to keep records confirming that no actual minors were involved in the making of the sexually explicit materials. In light of the difficulty experts face in determining an actor's true age and identity just by viewing the material itself, increasing the criminal penalties for failing to maintain these records are vital to ensuring that only adults appear in such productions.

Finally, the Act creates a new civil action for those aggrieved by the depraved acts of those who violate our child pornography laws. This is one area of the law where society as a whole can benefit from more vigorous enforcement, both on the criminal and civil fronts.

I was disappointed that the PROTECT Act did not pass into law last year, although it unanimously cleared the Senate in the final days of the 107th Congress. As incoming Chairman of the Judiciary Committee, passing this important bill will be one of my very top priorities. I remain open to hearing suggestions from all interested parties on how to improve the bill or make it even tougher against child pornographers. I strongly urge my colleagues to work with me and join with me in promptly passing this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003'' or ''PROTECT Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Obscenity and child pornography are not entitled to protection under the First Amendment under Miller v. California, 413 U.S. 15 (1973) (obscenity), or New York v. Ferber, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ''The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,'' New York v. Ferber, 458 U.S. 747, 757 (1982) (emphasis added), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. Osborne v. Ohio, 495 U.S. 103, 110 (1990).

(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ''[T]he most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.'' Ferber, 458 U.S. at 760.

(4) In 1982, when the Supreme Court decided Ferber, the technology did not exist to: (A) create depictions of virtual children that are indistinguishable from depictions of real children; (B) create depictions of virtual children using compositions of real children to create an unidentifiable child; or (C) disguise pictures of real children being abused by making the image look computer generated.

(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer generated. The technology will soon exist, if it does not already, to make depictions of virtual children look real.

(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since Ferber have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges will likely increase after the Ashcroft v. Free Speech Coalition decision.

(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic delineation may depend on the quality of the image scanned and the tools used to scan it.

(9) The impact on the government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in Free Speech Coalition. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

(10) In the absence of congressional action, this problem will continue to grow increasingly worse. The mere prospect that the technology exists to create computer or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution, for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable.

(11) To avoid this grave threat to the Government's unquestioned compelling interest

in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

(12) The Supreme Court's 1982 Ferber v. New York decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary to ensure that open and notorious trafficking in such materials does not reappear.

SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.

Section 2252A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting the following:

''(3) knowingly—

''(A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or

''(B) advertises, promotes, presents, distributes, or solicits through the mails, or in interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that conveys the impression that the material or purported material is, or contains, an obscene visual depiction of a minor engaging in sexually explicit conduct;'';

(B) in paragraph (4), by striking ''or'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

''(A) that has been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer;

''(B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or

''(C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer,

for purposes of inducing or persuading a minor to participate in any activity that is illegal.'';

(2) in subsection (b)(1), by striking ''(1), (2), (3), or (4)'' and inserting ''(1), (2), (3), (4), or (6)''; and

(3) by striking subsection (c) and inserting the following:

''(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) that—

''(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

''(B) each such person was an adult at the time the material was produced; or

''(2) the alleged child pornography was not produced using any actual minor or minors. No affirmative defense shall be available in any prosecution that involves obscene child pornography or child pornography as described in section 2256(8)(D). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 10 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.''.

SEC. 4. ADMISSIBILITY OF EVIDENCE.

Section 2252A of title 18, United States Code, is amended by adding at the end the following:

''(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor .''.

SEC. 5. DEFINITIONS.

Section 2256 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting before the semicolon the following: ''and shall not be construed to require proof of the actual identity of the person'';

(2) in paragraph (8)—

(A) in subparagraph (B), by inserting ''is obscene and'' before ''is'';

(B) in subparagraph (C), by striking ''or'' at the end; and

(C) by striking subparagraph (D) and inserting the following:

''(D) such visual depiction—

''(i) is, or appears to be, of a minor actually engaging in bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

''(ii) lacks serious literary, artistic, political, or scientific value; or

''(E) the production of such visual depiction involves the use of an identifiable minor engaging in sexually explicit conduct;''; and

(3) by striking paragraph (9), and inserting the following:

''(9) 'identifiable minor'—

''(A)(i) means a person—

''(I)(aa) who was a minor at the time the visual depiction was created, adapted, or modified; or

''(bb) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

''(II) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

''(ii) shall not be construed to require proof of the actual identity of the identifiable minor; or

''(B) means a computer or computer generated image that is virtually indistinguishable from an actual minor; and

''(10) 'virtually indistinguishable' means that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor.''.

SEC. 6. RECORDKEEPING REQUIREMENTS.

Section 2257 of title 18, United States Code, is amended—

(1) in subsection (d)(2), by striking ''of this section'' and inserting ''of this chapter or chapter 71,'';

(2) in subsection (h)(3), by inserting '', computer generated image or picture,'' after ''video tape''; and

(3) in subsection (i)—

(A) by striking ''not more than 2 years'' and inserting ''not more than 5 years''; and

(B) by striking ''5 years'' and inserting ''10 years''.

SEC. 7. SERVICE PROVIDER REPORTING OF CHILD PORNOGRAPHY AND RELATED INFORMATION.

Section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032) is amended—

(1) in subsection (c), by inserting ''or pursuant to'' after ''to comply with'';

(2) by amending subsection (f)(1)(D) to read as follows:

''(D) where the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.'';

(3) by redesignating paragraph (3) of subsection (b) as paragraph (4); and

(4) by inserting after paragraph (2) of subsection (b) the following new paragraph:

''(3) In addition to forwarding such reports to those agencies designated in subsection (b)(2), the National Center for Missing and Exploited Children is authorized to forward any such report to an appropriate official of a state or subdivision of a state for the purpose of enforcing state criminal law.''.

SEC. 8. CONTENTS DISCLOSURE OF STORED COMMUNICATIONS.

Section 2702 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6)—

(i) in subparagraph (A)(ii), by inserting ''or'' at the end;

(ii) by striking subparagraph (B); and

(iii) by redesignating subparagraph (C) as subparagraph (B);

(C) by redesignating paragraph (6) as paragraph (7); and

(D) by inserting after paragraph (5) the following:

''(6) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''; and

(2) in subsection (c)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following:

''(5) to the National Center for Missing and Exploited Children, in connection with a report submitted under section 227 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13032); or''.

SEC. 9. EXTRATERRITORIAL PRODUCTION OF CHILD PORNOGRAPHY FOR DISTRIBUTION IN THE UNITED STATES.

Section 2251 of title 18, United States Code, is amended—

(1) by striking ''subsection (d)'' each place that term appears and inserting ''subsection (e)'';

(2) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (b) the following:

''(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the

purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

''(2) The circumstance referred to in paragraph (1) is that—

''(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

''(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.''.

SEC. 10. CIVIL REMEDIES.

Section 2252A of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

''(f) CIVIL REMEDIES.—

''(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) may commence a civil action for the relief set forth in paragraph (2).

''(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

''(A) temporary, preliminary, or permanent injunctive relief;

''(B) compensatory and punitive damages; and

''(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.''.

SEC. 11. ENHANCED PENALTIES FOR RECIDIVISTS.

Sections 2251(d), 2252(b), and 2252A(b) of title 18, United States Code, are amended by inserting ''chapter 71,'' before ''chapter 109A,'' each place it appears.

SEC. 12. SENTENCING ENHANCEMENTS FOR INTERSTATE TRAVEL TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.

Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct.

SEC. 13. MISCELLANEOUS PROVISIONS.

(a) APPOINTMENT OF TRIAL ATTORNEYS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall appoint 25 additional trial attorneys to the Child Exploitation and Obscenity Section of the Criminal Division of the Department of Justice or to appropriate U.S. Attorney's Offices, and those trial attorneys shall have as their primary focus, the investigation and prosecution of Federal child pornography laws.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out this subsection.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 of title 18, United States Code.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of the prosecutions brought under chapter 110 of title 18, United States Code;

(B) an outcome-based measurement of performance; and

(C) an analysis of the technology being used by the child pornography industry.

(c) SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.

SEC. 14. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Mr. LEAHY. Mr. President, I rise today to join my good friend, the senior Senator from Utah, in introducing the PROTECT Act, a bill providing important new tools to fight child pornography. This bill is identical to the measure that Senator HATCH and I worked so hard on in the last Congress. The bill passed the Senate by unanimous consent in the 107th Congress and I am proud to be the lead cosponsor of this legislation for the 108th Congress as well, but unfortunately, it did not become law last year because, even though the Senate was still meeting, considering and passing legislation, the House of Representatives had adjourned. The House would not return to take action on this measure that had passed the Senate unanimously or to work out our differences.

I hope that the full Senate will quickly pass this bill again, and I strongly urge the Republican leadership in the House of Representatives to take this second opportunity to pass this important legislation. I also urge the Administration to support this bipartisan measure, instead of using this debate as an opportunity to push for legislation that strives to make an ideological statement, but which may not withstand Constitutional scrutiny.

I want to take a moment to speak about the history of this important bill and the effort that it took to get to this point. In May of 2002, I came to the Senate floor and joined Senator HATCH in introducing S. 2520, the PROTECT Act, after the Supreme Court's decision in Ashcroft v. Free Speech Coalition, (''Free Speech''). Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed that unlike legislative language proposed by the Administration in the last Congress, it was a good faith effort to work within the First Amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will stick. In 1996, when we passed the Child Pornography Prevention Act, (''CPPA''), many warned us that certain provisions of that Act violated the First Amendment. The Supreme Court's recent decision in Free Speech has proven them correct.

We should not sit by and do nothing. It is important that we respond to the Supreme Court decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the 1996 CPPA, this time we should respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand First Amendment scrutiny. We need a law with real teeth, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act in the 107th Congress, as Chairman of the Judiciary Committee I convened a hearing on October 2, 2002 on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children, (''NCMEC''), and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill supported by the Administration would not.

I then placed S. 2520 on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Senator HATCH circulated a Hatch-Leahy proposed Judiciary Committee substitute that improved the bill before our October 8 business meeting. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation, including the refusal of Committee members on the other side of the aisle to consider any pending legislation on the Committee's agenda.

I still wanted to get this bill done. That is why, for a full week in October, I worked to clear and have the full Senate pass a substitute to S. 2520 that tracked the Hatch-Leahy proposed committee substitute in nearly every area. Indeed, the substitute I offered even adopted parts of the House bill which would help the NCMEC work with local and state law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure—so similar to the joint Hatch-Leahy substitute—so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, they did not. Facing

the recess before the mid-term elections, we were stymied again.

Even after the last election, however, during our lame duck session, I continued to work with Senator HATCH to pass this legislation through the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee on November 14, 2002. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda yet again. At that meeting the Judiciary Committee amended and approved this legislation. We agreed on a substitute and to improvements in the victim shield provision that I authored.

Although I did not agree with two of Senator HATCH's amendments, because I thought that they risked having the bill declared unconstitutional, I nevertheless called both for the Committee to approve the bill and voted for the bill in its amended form. I will discuss these provisions later.

I then sought, that same day, to gain the unanimous consent of the full Senate to pass S. 2520 as reported by the Judiciary Committee, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am pleased that the Senate did pass S. 2520 by unanimous consent. I want to thank Senator HATCH for all he did to help clear the bill for passage in the 107th Congress.

Unfortunately, the House failed to act on this measure last year and the Administration decided not to push for passage. If they had, we could have passed a bill, sent it to the President, and already had a new law on the books.

Instead, I am here again with Senator HATCH asking yet again that this bill be enacted. I am glad to have been able to work hand in hand with Senator HATCH on the PROTECT Act because it is a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem.

The provisions of the Hatch-Leahy bill, as we introduce it, are bipartisan and good faith efforts to protect both our children and to honor the Constitution. At our hearing last October, Constitutional and criminal law scholars—one of whom was the same person who warned us last time that the CPPA would be struck down—stated that the PROTECT Act as introduced in the last Congress could withstand Constitutional scrutiny, although there were parts that were very close to the line. Let me outline some of the bill's important provisions:

I would like to emphasize some key provisions of the PROTECT Act. Section 3 of the bill creates two new crimes aimed at people who distribute child pornography and those who use such material to entice children to do illegal acts. Each of these new crimes carry a 15 year maximum prison sentence for a first offense and double that term for repeat offenders. First, the bill criminalizes the pandering of child pornography, creating a new crime to respond to the Supreme Court's recent ruling striking down the CPPA's definition of pandering. This provision is narrower than the old ''pandering'' definition for two reasons, both of which respond to specific Court criticisms: First, the new crime only applies to the people who actually pander the child pornography or solicit it, not to all those who possess the material ''downstream.''

The bill also contains a directive to the Sentencing Commission which asks them to distinguish between those who pander or distribute such material who are more culpable than those who solicit the material. Second, the pandering in this provision must be linked to ''obscene'' material, which is totally unprotected speech under Miller. Thus, while I would have liked for the provision to be crafted more narrowly so that ''purported'' material was not included, and I acknowledge that this provision may well be challenged on some of the same grounds as the prior CPPA provision, it responds to some specific concerns raised by the Supreme Court and is significantly narrower than the CPPA's definition of pandering.

Second, the bill creates a new crime to take direct aim at one of the chief evils of child pornography: namely, its use by sexual predators to entice minors either to engage in sexual activity or the production of more child pornography. This was one of the compelling arguments made by the government before the Supreme Court in support of the CPPA, but the Court rejected that argument as an insufficient basis to ban the production, distribution or possession of ''virtual'' child pornography. This bill addresses that same harm in a more targeted manner. It creates a new felony, which applies to both actual and virtual child pornography, for people who use such material to entice minors to participate in illegal activity. This will provide prosecutors a potent new tool to put away those who prey upon children using such pornography—whether the child pornography is virtual or not.

Next, this bill attempts to revamp the existing affirmative defense in child pornography cases both in response to criticisms of the Supreme Court and so that the defense does not erect unfair hurdles to the prosecution of cases involving real children. Responding directly to criticisms of the Court, the new affirmative defense applies equally to those who are charged with possessing child pornography and to those who actually produce it, a change from current law. It also allows, again responding to specific Supreme Court criticisms, for a defense that no actual children were used in the production of the child pornography—i.e. that it was made using computers. At the same time, this provision protects prosecutors from unfair surprise in the use of this affirmative defense by requiring that a defendant give advance notice of his intent to assert it, just as defendants are currently required to give if they plan to assert an alibi or insanity defense. As a former prosecutor I suggested this provision because it effects the real way that these important trials are conducted. With the provision, the government can marshal the expert testimony that may be needed to rebut this ''virtual porn'' defense in cases where real children were victimized.

This improved affirmative defense provides important support for the constitutionality of much of this bill after the Free Speech decision. Even Justice Thomas specifically wrote that it would be a key factor for him. This is one reason for making the defense applicable to all non-obscene, child pornography, as defined in 18 U.S.C. §2256. In the bill's current form, however, the affirmative defense is not available in one of the new proposed classes of virtual child pornography, which would be found at 18 U.S.C. §2256(8)(D). This omission may render that provision unconstitutional under the First Amendment, and I hope that, as the legislative process continues, we can work with constitutional experts to improve the bill in this and other ways. I do not want to be here again in five years, after yet another Supreme Court decision striking this law down.

The bill also provides needed assistance to prosecutors in rebutting the virtual porn defense by removing a restriction on the use of records of performers portrayed in certain sexually explicit conduct that are required to be maintained under 18 U.S.C. §2257, and expanding such records to cover computer images. These records, which will be helpful in proving that the material in question is not ''virtual'' child pornography, may be used in federal child pornography and obscenity prosecutions under this Act. The purpose of this provision is to protect real children from exploitation. It is important that prosecutors have access to this information in both child pornography and obscenity prosecutions, since the Supreme Court's recent decision has had the effect of narrowing the child pornography laws, making more likely that the general obscenity statutes will be important tools in protecting children from exploitation. In addition, the Act raises the penalties for not keeping accurate records, further deterring the exploitation of minors and enhancing the reliability of the records.

Next, this bill contains several provisions altering the definition of ''child pornography'' in response to the Free Speech case. One approach would have been simply to add an ''obscenity'' requirement to the child pornography definitions. Outlawing all obscene child pornography real and virtual; minor and 'youthful-adult;' simulated and

real—would clearly pass a constitutional challenge because obscene speech enjoys no protection at all. Under the Miller obscenity test, such material (1) ''appeals to the prurient interest,'' (2) is utterly ''offensive'' in any ''community,'' and (3) has absolutely no ''literary, artistic or scientific value.''

Some new provisions of this bill do take this ''obscenity'' approach, like the new § 2256(8)(B). Other provisions, however, take a different approach. Specifically, the CPPA's definition of ''identifiable minor'' has been modified in the bill to include a prong for persons who are ''virtually indistinguishable from an actual minor.'' This adopts language from Justice O'Connor's concurrence in the Free Speech case. Thus, while this language is defensible, I predict that this provision will be the center of much constitutional debate. Although I will explain in more detail later, these new definitional provisions risk crossing the constitutional line.

It does not do America's children any good to write a law that might get struck down by our courts in order to prove an ideological point. These provisions should be fully debated and examined during the legislative process, and I will speak about them in more detail later.

The bill also contains a variety of other measures designed to increase jail sentences in cases where children are victimized by sexual predators. First, it enhances penalties for repeat offenders of child sex offenses by expanding the predicate crimes which trigger tough, mandatory minimum sentences. Second, the bill requires the U.S. Sentencing Commission to address a disturbing disparity in the current Sentencing Guidelines. The current sentences for a person who actually travels across state lines to have sex with a child are not as high as for child pornography. The Commission needs to correct this oversight immediately, so that prosecutors can take these dangerous sexual predators off the street. These are all strong measures designed to protect children and increase prison sentences for child molesters and those who otherwise exploit children.

The Act also has several provisions designed to protect the children who are victims in these horrible cases. Privacy of the children must be paramount. It is important that they not be victimized yet again in the criminal process. This bill provides for the first time ever an explicit shield law that prohibits the name or other non physical identifying information of the child victim, other than the age or approximate age, from being admitted at any child pornography trial. It is also intended that judges will take appropriate steps to ensure that such information as the child's name, address or other identifying information not be publicly disclosed during the pretrial phase of the case or at sentencing. The bill also contains a provision requiring the judge to instruct the jury, upon request of the government, that no inference should be drawn against the United States because of information inadmissible under the new shield law.

The Hatch-Leahy PROTECT Act also amends certain reporting provisions governing child pornography. Specifically, it allows federal authorities to report information they receive from the Center from Missing and Exploited Children, CMEC, to state and local police without a court order. In addition, the bill removes the restrictions under the Electronic Communications Privacy Act, ECPA, for reporting the contents of, and information pertaining to, a subscriber of stored electronic communications to the CMEC when a mandatory child porn report is filed with the CMEC pursuant to 42 U.S.C. §13032. This change may invite federal, state or local authorities to circumvent all subpoena and court order requirements under ECPA and allow them to obtain subscriber emails and information by triggering the initial report to the CMEC themselves. To the extent that these changes in ECPA may have that unintended effect, as this bill is considered in the Judiciary Committee and on the floor, we should consider mechanisms to guard against subverting the safeguards in ECPA from government officials going on fishing expeditions for stored electronic communications under the rubric of child porn investigations.

I also must express my disappointment in a recent Government Accounting Office, GAO, report that criticizes the Department of Justice information sharing regulations related to the CMEC tip line. Evidently, due to outdated turf mentalities, the Attorney General's regulations exclude both the United States Secret Service and the U.S. Postal Inspection Service from direct access to important tip line information. That is totally unacceptable, especially in the post 9–11 world where the importance of information sharing is greater than ever. How can the Administration justify support of this bill, which allows state and local law enforcement officers such access, when they are simultaneously refusing to allow other federal law enforcement agencies access to the same information? I urge the Attorney General to end this unseemly turf battle and to issue regulations allowing both the Secret Service and the Postal Inspection Service, who both perform valuable work in investigating these cases, to have access to this important information so that they can better protect our nation's children.

This bill also provides for extraterritorial jurisdiction where a defendant induces a child to engage in sexually explicit conduct outside the United States for the purposes of producing child pornography which they intend to transport to the United States. The provision is crafted to require the intent of actual transport of the material into the United States, unlike the House bill from the last Congress, which criminalized even an intent to make such material ''accessible.'' Under that overly broad wording, any material posted on a web site internationally could be covered, whether or not it was ever intended that the material be downloaded in the United States.

Finally, the bill provides also a new private right of action for the victims of child pornography. This provision has teeth, including injunctive relief and punitive damages that will help to put those who produce child pornography out of business for good. I commend Senator HATCH for his leadership on this provision.

These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong.

As to the administration proposal, unfortunately legal experts could not also vouch for the constitutionality of the bill supported by the Administration in the last Congress, which seemed to challenge the Supreme Court's decision, rather than accommodate the restraints spelled out by the Supreme Court. That proposal and the associated House bill from the 107th Congress simply ignored the Supreme Court's decision, reflecting an ideological response rather than a carefully drawn bill that would stand up to scrutiny. Last year, I received letters from other Constitutional scholars and practitioners expressing the same conclusion, which I will place in the record with unanimous consent.

With regard to the potential constitutional issues and suggested improvements, as I mentioned previously, the PROTECT Act is a good faith effort to tackle this problem, but it is not perfect and I would like to see some additional changes to the bill. I hope that we can consider these as the process moves forward.

First, regarding the tip line, I would like to clarify that law enforcement agents cannot ''tickle the tip line'' to avoid the key protections of the Electronic Communications Privacy Act. This may include clarifying 42 U.S.C. §13032 that the initial tip triggering the report may not be generated by the government's investigative agents themselves. A tip line to the CMEC is just that—a way for outsiders to report wrongdoing to the CMEC and the government, not for the government to generate a report to itself without following otherwise required lawful process.

Second, regarding the affirmative defense, I would like to ensure that there is an affirmative defense for the new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made using not any child but only actual, identifiable adults.

As a general matter, it is worth repeating that we could be avoiding all these problems were we to take the simple approach of outlawing ''obscene'' child pornography of all types,

which we do in one new provision that I suggested. That approach would produce a law beyond any possible challenge. This approach is also supported by the National Center for Missing and Exploited Children, which we all respect as the true expert in this field.

Following is an excerpt from the Center's answer to written questions submitted after our hearing, which I will place in the RECORD in its entirety:

Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .

In the post Free Speech decision legal climate, the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to the National Center for Missing and Exploited Children, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one. Because that is not the approach we have decided to use, I recognize that the PROTECT Act contains provisions about which some may have legitimate Constitutional questions.

Specifically, in addition to the provisions that I have already discussed, there were two amendments adopted in the Judiciary Committee in the last Congress to which I objected that are included in the bill as we introduce it today. I felt and still feel that these provisions needlessly risked a serious constitutional challenge to a bill that provided prosecutors the tools they needed to do their jobs. Let me discuss my opposition to these two amendments offered by my good friend Senator HATCH last Congress.

As to the expansion of the pandering provision, although I worked with Senator HATCH to write the new pandering provision in the PROTECT Act, I did not support Senator HATCH's amendment extending the provision to cover ''purported'' material, which criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult.

The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and that goes too far.

The original pandering provision in S. 2520 was quite broad, and some argued that it presented constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on that current provision.

I was heartened that Professor Schauer of Harvard, a noted First Amendment expert, testified at our hearing that he thought that the original provision was Constitutional, barely. Unfortunately, Professor Schauer has since written to me stating that this new amendment to include ''purported'' material ''would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it.'' I will place that letter and other materials in the record with unanimous consent of the Senate.

Because this change endangers the entire pandering provision, because it is unwise, and because that section is already strong enough to prosecute those who peddle child pornography, I hope that we can debate the merits of that provision as the legislative process continues.

And as to the inclusion of 100 percent virtual child pornography in ''Identifiable Minor'' provision, a change to the definition of ''identifiable minor'' would expand the bill to cover ''virtual'' child pornography that is, 100 percent computer generated pictures not involving any real children. For that reason, it also presents constitutional problems. I objected to this amendment when it was added to the bill in the last Congress in Committee and I continue to have serious concerns with it now.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. This change which would include all ''virtual child pornography'' in the definition of child pornography, in my view, crosses the constitutional line, however, and needlessly risks protracted litigation that could assist child pornographers in escaping punishment. I hope we can work to narrow this provision.

Although I joined Senator HATCH in introducing this bill, even when it was introduced last year I expressed concern over certain provisions. One such provision was the new definition of ''identifiable minor.'' When the bill was introduced, I noted that this provision might ''both confuse the statute unnecessarily and endanger the already upheld 'morphing' section of the CPPA.'' I said I was concerned that it ''could present both overbreadth and vagueness problems in a later constitutional challenge.''

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, it is obscene, or No. 2, it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

The original ''identifiable minor'' provision in the PROTECT Act may be used without any link to obscenity doctrine. Therefore, what saved the original version as introduced in the 107th Congress was that it applied to child porn made with real ''persons.'' The provision was designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved. That is the provision as Senator HATCH and I introduced this bill last year.

The change adopted in the Judiciary Committee last year, however, redefined ''identifiable minor'' by creating a new category of pornography for any ''computer generated image that is virtually indistinguishable from an actual minor'' dislodged, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated.

That was never the goal of this provision and that was the reason it was constitutional. There are other provisions in the bill that deal with obscene virtual child pornography that I support. This provision was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution.

I support the definition of ''identifiable minor'' as we originally wrote and introduced it last Congress. Because this new change seriously weakens the constitutional argument supporting this entire provision, I oppose it and I hope that we can work to further narrow this provision.

These provisions raise legitimate concerns, but in the interest of making progress I support consideration of the measure as introduced. I hope that we can work to debate these issues and improve it and produce a bill with the best chance of withstanding a constitutional challenge.

That is not everyone's view. Others evidently think it is more important to make an ideological statement than to write a law. A media report on this legislation at the end of the last Congress reported the wide consensus that the Hatch-Leahy bill was more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: ''Even if it comes back to Congress three times we will have created better legislation.''

To me, that makes no sense. Why not create the ''better legislation'' right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what the PROTECT Act seeks to accomplish.

Even though this bill is not perfect, I am glad to stand with Senator HATCH to secure its approval by the Senate as I did in the last Congress.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. I hope that the Administration and the House do not decide to play politics with this issue

this year as I fear they did at the close of the last Congress. I urge swift consideration and passage of this important bill aimed at protecting our nation's children.

Mr. President, I ask unanimous consent that the letters and materials to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 17, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Thank you for the opportunity to express the views of the National Center for Missing and Exploited Children on these critically important issues for our nation's children. Your stewardship of the Committee's tireless efforts to craft a statute that will withstand constitutional scrutiny is wise and in the long-term best interest of the nation. The National Center for Missing and Exploited Children is grateful for your leadership on this issue.

Please find below my response to your written questions submitted on October 9, 2002, regarding the ''Stopping Child Pornography: Protecting our Children and the Constitution.''

1. Our view is that the vast majority (99–100%) of all child pornography would be found to be obscene by most judges and juries, even under the standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene.

There is a legitimate concern that the obscenity standard does not fully recognize, and therefore punish the exceptional harm to children inherent in child pornography. This issue can be addressed by the enactment of tougher sentencing provisions if the obscenity standard is implemented in the law regarding child pornography. Moreover, mere possession of obscene materials under current law in most jurisdictions is not a criminal violation. If the obscenity standard were implemented for child pornography the legislative intent should be clear concerning punishment for possession of child obscene pornography.

In the post—Free Speech decision legal climate the prosecution of child pornography cases under an obscenity approach is a reasonable strategy and sound policy.

2. Based on my experience all the images in actual criminal cases meet the lawful definition of obscenity, irrespective of what community you litigate the case. In my experience there has never been a visual depiction of child pornography that did not meet the constitutional requirements for obscenity.

3. The National Center for Missing and Exploited Children fully supports the correction of this sentencing disparity and welcomes the provision of additional tools for federal judges to remove these predators from our communities. These types of offenders belong to a demographic that is the highest percentile in terms of recidivism than any other single offender category.

4. The National Center for Missing and Exploited Children fully supports language that allows only ''non-government sources'' to provide tips to the CyberTipline. The role of the CyberTipline at the National Center for Missing and Exploited Children is to provide tips received from the public and Electronic Communication Services communities and make them available to appropriate law enforcement agencies. Due in part to the overwhelming success of the system and in part to the tragedies of September 11, 2001, federal law enforcement resources cannot address all of the legitimate tips and leads received by the CyberTipline. Allowing the National Center for Missing and Exploited Children and appropriate federal agencies to forward this information to state and local law enforcement while at the same time addressing legitimate privacy concerns is fully supported.

5. The victim shield provision is an excellent and timely policy initiative and one that is fully supported by the National Center for Missing and Exploited Children. This provision should allow the narrow exception to a general non-disclosure clause that anticipates the need for law enforcement and prosecutors to use the victim's photography and other relevant information for the sole purpose of verification and authentication of an actual child victim in future cases. This exception would allow the successful prosecution of other cases that may involve a particular victim and still provide the protection against the revictimization by the criminal justice system.

6. The National Center for Missing and Exploited Children fully supports extending the terms of authorized supervised release in federal cases involving the exploitation of minors. The evidence for extended supervision in such cases is overwhelming. Without adequate treatment and continued supervision, there is a significantly higher risk for re-offending by this type of offender. Moreover, there is a significant link between those offenders who possess child pornography and those who sexually assault children. Please see the attached studies that the National Center for Missing and Exploited Children has produced on these issues.

Thank you again for the opportunity to address these important issues. Should you need further input or assistance please contact us at your convenience.

Sincerely,

DANIEL ARMAGH,
Director, Legal Resource Division,
National Center for Missing and Exploited Children.

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
Charlottesville, VA, Nov. 28, 2002.

SENATOR PATRICK J. LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY: On October 2, 2002, I testified before the Senate Judiciary Committee concerning S. 2520 and H.R. 4623. Each of these bills was drafted in response to Ashcroft v. Free Speech Coalition, 122 S.Ct. 1389 (2002), in which the Supreme Court threw out key provisions of the federal child pornography laws. As I stated in my testimony, the new sections contained in S. 2520 have been carefully tailored with an eye towards satisfying the precise concerns identified by the Supreme Court. Recently, Senator Hatch offered an amendment in the nature of a substitute to S. 2520 (hereinafter ''the Hatch Substitute''). I have examined the Hatch Substitute, and I believe that it contains a definition of child pornography that is nearly identical to the definition rejected by Free Speech Coalition. Therefore, the Hatch Substitute is unlikely to survive constitutional challenge in the federal courts, and the Committee should decline to adopt it.

As you know, each of these bills contains some complicated provisions, including especially their definition sections. As you also know, this complexity is unavoidable, for the Congress aims to intervene in and eliminate some of the complex law enforcement problems created by the phenomenon of virtual pornography. In the following comments, I will try to state my concerns about the Hatch Substitute as concisely as possible, while identifying the statutory nuances that are likely to generate significant constitutional questions in the event that the Hatch Substitute is enacted.

In Free Speech Coalition, the Supreme Court scrutinized provisions of the Child Pornography Prevention Act of 1996 (''CPPA'') that were designed to eliminate obstacles to law enforcement created by virtual child pornography. The proliferation of virtual pornography has enabled child pornographers to escape conviction by arguing that it is so difficult to distinguish the virtual child from the real one that (1) the government cannot carry its burden of proving that the pornography was made using real children and/or (2) the government cannot carry its burden of proving scienter because the defenders believed that the images in their possession depicted virtual children, rather than real ones. In order to foreclose these arguments, the CPPA defined ''child pornography'' broadly so that it extended not only to a sexually-explicit image that had been produced using a real minor, but also to an image that ''appears to be of a minor'' engaging in sexually-explicit conduct. Free Speech Coalition rejected this definition on First Amendment grounds. The Court reaffirmed the holding of New York v. Ferber, 458 U.S. 747 (1982), under which the government is free to regulate sexually-explicit materials produced using real minors without regard to the value of those materials. However, the Court refused to extend the Ferber analysis to sexually-explicit materials that only appear to depict minors. The Court noticed that many mainstream movies, as well as works of great artistic, literary, and scientific significance, explore the sexuality of adolescents and children. Such works, including ones that are sexually explicit, are valuable in the eyes of the community, and, as long as their production involves no real children, such works are protected by the First Amendment against governmental regulation.

In Free Speech Coalition, the Supreme Court expressly considered and rejected a number of arguments made by the Solicitor General on behalf of the CPPA definition. One of these arguments was that the ''speech prohibited by the CPPA is virtually indistinguishable from child pornography, which may be banned without regard to whether it depicts works of value.'' In his opinion for the Court, Justice Kennedy explained that this argument fundamentally misconceived the nature of the First Amendment inquiry. Materials that satisfy the Ferber definition are regulable not because they are necessarily without value; to the contrary, Ferber itself recognized that some child pornography might have significant value. Indeed, the Court there reasoned that the ban on the use of actual children was permissible in part because virtual images—by definition, images ''virtually indistinguishable'' from child pornography—were an available and lawful alternative. Hence, as Justice Kennedy put it: ''Ferber, then, not only referred to the distinction between actual and virtual child pornography, it relied on [the distinction] as a reason supporting its holding. Ferber provides no support for a statute that eliminates the distinction and makes the alternative mode criminal as well.''

S. 2520 aims to reform the CPPA in ways that are sensitive to these First Amendment value judgments. By contrast, the Hatch Substitute proposes that the Congress should reenact a definition that is almost identical to the one that the Supreme Court just rejected. In the Hatch Substitute, the definition of child pornography would cover,

among other things, sexually-explicit materials whose production involved the use of an ''identifiable minor.'' The Hatch Substitute defines ''identifiable minor'' as including a ''computer or computer generated image that is virtually indistinguishable from an actual minor.'' As I explained above, the Solicitor General suggested in Free Speech Coalition that the First Amendment would be satisfied if the Supreme Court limited the CPPA to depictions that are ''virtually indistinguishable'' from child pornography, and the Court rejected that interpretation. To put it mildly, it is hard to imagine that the Supreme Court would be inclined to view the Hatch Substitute as a good-faith legislative response to Free Speech Coalition when all it does is reenact a definition that the Court there expressly considered and disapproved. You will notice that I here am paraphrasing the definition provisions in the Hatch Substitute and omitting some of their complexity. In particular, the Hatch Substitute provides a further definition of the phrase ''virtually indistinguishable,'' requiring that the quality of the depiction be determined from the viewpoint of an ''ordinary person'' and providing an exception for ''drawings, cartoons, sculptures, or paintings.'' But neither the definition of ''identifiable minor'' nor these refinements of ''virtually indistinguishable'' are calculated to satisfy the concerns raised in Free Speech Coalition. As Justice Kennedy explained for the Court, an absolute ban on pornography made with real children is compatible with First Amendment rights precisely because computer-generated images are an available alternative, and, yet, the Hatch Substitute proposes to forbid the computer-generated alternative as well. Likewise, an exception for cartoons and so forth is insensitive to the Supreme Court's commitment to protect realistic portrayals of child sexuality, a commitment that is clearly expressed in the Court's recognition of the value of (among other things) mainstream movies such as Traffic and American Beauty.

In this regard, you will notice that the Hatch Substitute closely resembles some of the defective provisions of H.R. 4623, which would prohibit virtual child porn that is ''indistinguishable'' from porn produced with real minors. Unlike S. 2520, both H.R. 4623 and the Hatch Substitute seem to embody a decision merely to endorse the unconstitutional portions of the CPPA all over again. The Committee should refuse to engage in such a futile and disrespectful exercise. The law enforcement problems posed by virtual pornography are not symbolic but real, and the Congress should make a real effort to solve them. In my judgment, S. 2520 is a real effort to solve them, and the Committee should use S. 2520 as the basis for correcting the CPPA.

The Hatch Substitute contains additional innovations that the Committee should study carefully. Because this letter already is too long, I will allude to only one of them here. The ''pandering'' provision set forth in the Hatch Substitute contains some language that strikes me as being both vague and unnecessarily broad, and the provision therefore is likely to attract unfavorable attention in the federal courts. The Hatch pandering provision would punish anyone who ''advertises, promotes, presents, distributes, or solicits . . . any material or purported material in a manner that conveys the impression that the material or purported material'' is child pornography. To be completely candid, I am not sure that I understand what problems would be solved by defining the items that may not be pandered so that they include not only actual ''material,'' but also ''purported material.'' I suppose that there might be cases where a person offers to sell pornographic materials that do not actually exist and that the person might make the offer in a manner that violates the pandering prohibition. If that is the problem that the drafters of the Hatch Substitute have in mind, it seems that they might solve that problem more cleanly by adding the word ''offers'' to the list of forbidden conduct and deleting the reference to ''purported material.'' (In other words, the provision would punish anyone who ''advertises, offers, promotes, presents, distributes, or solicits through the mails . . . any material on a manner that conveys the impression that the material'' is child pornography.) If that is not the problem that the Hatch Substitute has in mind, I would suggest that the drafters identify the problem precisely and develop language that is clearer and narrower than the phrase ''purported material,'' for that ambiguous term is likely to generate First Amendment concerns that otherwise could and should be avoided.

Respectfully yours,

ANNE M. COUGHLIN,
Class of 1948 Research Professor of Law.

Washington, DC, Oct. 11, 2002.

HON. PATRICK J. LEAHY,
Chairman, U.S. Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY: I want to thank you for your efforts to protect American children by filling the gap left by the Supreme Court's decision to strike down the Child Pornography Prevention Act. Ashcroft v. Free Speech Coalition dealt a blow to those who appreciate the important role the federal government must ply in protecting young people from those who would exploit them. Your efforts to craft a bill, the PROTECT Act, that will withstand Constitutional scrutiny deserves the public's applause.

I would like to draw your attention to a similar, but separate, matter that also reflects on the health and security of our children in regards to pornography. Like the Child Pornography Prevention Act, the Child Internet Protection Act (CIPA), which was passed by the 106th Congress, has been struck down by the federal judiciary. In American Library Association, et al. v. United States of America, et al, a District Court in Pennsylvania threw CIPA out, arguing that its efforts to prevent children from exposure to harmful material on school and library computers amounted to a violation of the First Amendment. The Justice Department has appealed that case to the Supreme Court, where the lower court's decision will very likely be upheld. Unfortunately, as Harvard Law School professor Frederick Schauer testified at the hearing you recently held on CPPA, ''constitutionally suspect legislation under existing Supreme Court interpretation of the First Amendment, whatever we may think of the wisdom and accuracy of those interpretations, puts the process of [prosecution] . . . on hold while the . . . courts proceed at their own pace.

I think we ought not wait for what will likely be a disappointing conclusion. Rather, I hope you will lead an effort to craft new legislation which (1) passes Constitutional muster, and (2) better enables schools and libraries to protect children from harmful images and websites. Let me take a moment to delimit how exactly a new, improved Children's Internet Protection Act would differ from the bill passed by the 106th Congress.

First, a new bill should distinguish clearly between measures affecting adults and minors. Though the title of the legislation is the Children's Internet Protection Act, it requires technology protection measures on all computers with Internet access, regardless of the age of the patron using each computer. If the aim is to protect minors, it is unnecessary to put filters on every computer in a library. This, of course, was one of the District Court's primary concerns. I hope you will draft legislation requiring separate computers for adults and minors. All those under 18 should be required to use filtered computers, unless accompanied by a parent or teacher. Those over 18 should have access to un-filtered computers in a separate area. I smaller facilities, where only one computer is available, special adult hours could be set during which the filter is disabled and only adults may use the computer. The rest of the time a filter would be in place.

Second, I would encourage you to incorporate language that distinguishes children 12 and under from teenagers 13–18. Teenagers have greater capacities to process information than children, as well as different needs for information. In recognition of this, I would hope that your new bill would require different policies for children and teenagers, such as providing different filter settings.

Third, I hope you will consider expanding the scope of your bill to include provisions that protect minors from violent images as well as sexual ones. I realize that limiting the access of children to violent content poses a potentially more difficult constitutional question, but based on the weight of social science evidence showing the harm caused to children by violence in the media, I believe that violence must be included in any definition of content that is ''harmful to children.''

To further explain the reasoning behind these recommendations, I am enclosing a law review article, ''On Protecting Children from Speech,'' which will be published next fall in the Chicago-Kent Law Review. I would welcome the opportunity to discuss our position with you further. In the meantime, please feel free to contact Marc Dunkelman, Assistant Director of the Communitarian Network, with any questions. Thank you for your consideration.

Sincerely,

AMITAI ETZIONI,
Founder & Director.

MAY 13, 2002.

Chairman PATRICK J. LEAHY,
U.S. Senate Judiciary Committee, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our grave concern with the legislation recently proposed by the Department of Justice in response to the Supreme Court's decision in Ashcroft, et al. v. The Free Speech Coalition, et al., No. 00–795 (Apr. 16, 2002). In particular, the proposed legislation purports to ban speech that is neither obscene nor unprotected child pornography (indeed, the bill expressly targets images that do not involve real human beings at all). Accordingly, in our view, it suffers from the same infirmities that led the Court to invalidate the statute at issue in Ashcroft.

We emphasize that we share the revulsion all Americans feel toward those who harm children, and fully support legitimate efforts to eradicate child pornography. As the Court in Ashcroft emphasized, however, in doing so Congress must act within the limits of the First Amendment. In our view, the bill proposed by the Department of Justice fails to do so.

Respectfully submitted,

JODIE L. KELLEY,
Partner, Jenner & Block, LLC, Washington, DC.

ERWIN CHEMERINSKY,
Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political

Science, University of Southern California Law School, Los Angeles, CA.

PAUL HOFFMAN,
Partner, Schonbrun, DeSimone, Seplow, Harris & Hoffman, LLP, Venice, CA.
Adjunct Professor, University of Southern California Law School, Los Angeles, CA.

GREGORY P. MAGARIAN,
Assistant Professor of Law, Villanova University School of Law, Villanova, PA.

JAMIN RASKIN,
Professor of Law, American University, Washington College of Law, Washington, DC.

DONALD B. VERRILLI, Jr.,
Partner, Jenner & Block, LLC, Washington, DC.

HARVARD UNIVERSITY,JOHN F. KENNEDY SCHOOL OF GOVERNMENT,
Cambridge, MA, October 3, 2002.

Re S. 2520.

Hon. PATRICK LEAHY,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR LEAHY: Following up on my written statement and on my oral testimony before the Committee on Wednesday, October 2, 2002, the staff of the Committee has asked me to comment on the constitutional implications of changing the current version of S. 2520 to change the word ''material'' in Section 2 of the bill (page 2, lines 17 and 19) to ''purported material.''

In my opinion the change would push well over the constitutional edge a provision that is now right up against that edge, but probably barely on the constitutional side of it.

As I explained in my statement and orally, the Supreme Court has from the Ginzburg decision in 1966 to the Hamling decision in 1973 to the Free Speech Coalition decision in 2002 consistently refused to accept that ''pandering'' may be an independent offense, as opposed to being evidence of the offense of obscenity (and, by implication, child pornography). The basic premise of the pandering prohibition in S. 2520 is thus in some tension with more than thirty-five years of Supreme Court doctrine. What may save the provision, however, is the fact that pandering may also be seen as commercial advertisement, and the commercial advertisement of an unlawful product or service is not protected by the Supreme Court's commercial speech doctrine, as the Court made clear in both Virginia Pharmacy and also in Pittsburgh Press v. Human Relations Commission, 413 U.S. 376 (1973). It is important to recognize, however, that this feature of commercial speech doctrine does not apply to non-commercial speech, where the description on advocacy of illegal acts is fully protected unless under the narrow circumstances, not applicable here, of immediate incitement.

The implication of this is that moving away from communication that could be described as an actual commercial advertisement decreases the availability of this approach to defending Section 2 of S. 2520. Although it may appear as if advertising ''material'' that does not exist at all (''purported material'') makes little difference, there is a substantial risk that the change moves the entire section away from the straight commercial speech category into more general description, conversation, and perhaps even advocacy. Because the existing arguments for the constitutionality of this provision are already difficult ones after Free Speech Coalition, anything that makes this provision less like a straight offer to engage in a commercial transaction increases the degree of constitutional jeopardy. By including ''purported'' in the relevant section, the pandering looks less commercial, and thus less like commercial speech, and thus less open to constitutional defense I outlined in my written statement and oral testimony.

I hope that this is helpful.

Yours sincerely,

FREDERICK SCHAUER,
Frank Stanton Professor of the First Amendment.

ORDERS FOR TUESDAY, JANUARY 14, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Tuesday, January 14. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period of morning business until 12:30 p.m., with the time equally divided and Senators permitted to speak for up to 10 minutes each.

I ask unanimous consent that the Senate recess from the hour of 12:30 p.m. to 2:15 p.m. for the weekly party caucuses.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. As I mentioned earlier, we hope to have the committee resolution agreed to. Members should be on notice that rollcall votes are therefore possible beginning tomorrow morning.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:07 p.m., adjourned until Tuesday, January 14, 2003, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate January 13, 2003:

DEPARTMENT OF THE TREASURY

JOHN W. SNOW, OF VIRGINIA, TO BE SECRETARY OF THE TREASURY, VICE PAUL HENRY O'NEILL, RESIGNED.

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. EDWIN H. ROBERTS JR., 0000

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

FRANK W. * ALLARA JR., 0000
PAUL J. * ANDREWS, 0000
JEFFREY L. * ANDRUS, 0000
KENNETH J. * BOONE, 0000
ROBERT R. * COOPE, 0000
GARY J. * GERACCI, 0000
DARLENE R. * HACHMEISTER, 0000
ALLEN J. * HEBERT JR., 0000
MICHELE M. * JOINES, 0000
LARA INGA * LARSON, 0000
ROSE MARIE * LEARY, 0000
STEVEN C. * MALLER, 0000
ROY C. * MARLOW, 0000
COLIN A. * MIHALIK, 0000
MARIA * SANTOS, 0000
CHARLES J. * SNYDER, 0000
JESUS L. * SOJO, 0000
CRAIG S. * STEWART, 0000
LUKE UNDERHILL, 0000
MICHAEL N. * WAJDOWICZ, 0000
GLYNIS D. * WALLACE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

To be major

NANCY M. ACAMPADO, 0000
FEDERICO C. AQUINO JR., 0000
MEDHAT G. BADER, 0000
ROBERT K. BOGART, 0000
ALVIS D. BURRIS, 0000
MARJORIE M. CABELL, 0000
JEFFERY A. CASEY, 0000
ANGELA L. DELGADO, 0000
JASON C. DORMINEY, 0000
NEIL E. DUNLOW, 0000
JOHN C. DUNNING, 0000
THOMAS P. EDMONSON, 0000
STEPHANIE A. FAGEN, 0000
AGUSTIN L. FARIAS, 0000
DOUGLAS M. FERRIS JR., 0000
SHAI T. HALL, 0000
DERREK D. HENRIE, 0000
RODNEY C. JOHNS, 0000
RANDALL S. JONES, 0000
ROBERT H. JUDY, 0000
MATTHEW D. KATZ, 0000
AMAR KOSARAJU, 0000
JASON S. LENK, 0000
DOUGLAS M. LITTLEFIELD, 0000
PAUL A. LONGO, 0000
VICTOR B. MAGGIO, 0000
IGOR MARYANCHIK, 0000
SAPNA J. MELCHIORRE, 0000
JUAN K. PACKER, 0000
DARON C. PRAETZEL, 0000
THOMAS P. RILEY, 0000
ENRIQUE E. ROSADO, 0000
JENNIE LEIGH L. STODDART, 0000
GEORGE A. TANKSLEY JR., 0000
KAREN ANN THOMPSON, 0000
MINH C. VU, 0000
KIM L. WILKINSON, 0000
JUNKO YAMAMOTO, 0000
JAMES H. YAO, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

GREGORY A. * ABRAHAMIAN, 0000
EDITH A. * AGUAYO, 0000
ALAN K. * ANZAI, 0000
RICHARD D. * BAKER, 0000
CATHERINE S. * BARD, 0000
GORDON W. * BATES JR., 0000
RICHARD J. * BEAN, 0000
CHARLES P. * BIEDIGER, 0000
JOSEPH A. * BIFANO, 0000
DAN W. BODILY, 0000
JAMES J. * BORDERS, 0000
JAMES E. BOYD, 0000
MARK P. BURTON, 0000
LEANDRO T. CABANILLA, 0000
JEFFREY S. * CALDER, 0000
DAVID B. * CARMACK, 0000
JOHN B. * CHACE, 0000
JONATHAN T. * CHAI, 0000
ANDY CJ * CHIOU, 0000
NISHAN H. * CHOBANIAN JR., 0000
THOMAS F. CLARKE, 0000
GARY L. * COHEN, 0000
EDWARD J. * COHN JR., 0000
ANDREW J. * COLLINS, 0000
KEVIN P. * CONNOLLY, 0000
DAVID D. COPP, 0000
DAVID L. * CUNNINGHAM, 0000
JOSEPH L. CVANCARA, 0000
DAVID R. * DELONE, 0000
SUSAN E. * DESJARDINS, 0000
LEE H. * DIEHL, 0000
BRIAN B. DURSTELER, 0000
MARK A. ERICKSON, 0000